IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Misc. No.42080-M of 2006

Decided on : November 29, 2007

Harish Gulati

... Petitioner

VERSUS

The State of Haryana

... Respondent

CORAM :
HON'BLE MR.JUSTICE A.N.JINDAL

Present: Mr.Sanjiv Gupta,
Advocate for the petitioner.

Mr.K.S.Godara, Deputy Advocate General
for the respondent – State of Haryana.

A.N.JINDAL, J.-

The petitioner has invoked the provisions of Section 482 of the Code of Criminal Procedure (for short the Cr.P.C.) for quashing of the complaint dated 24.4.2002 (Annexure P-4) under Section 29 of the Insecticides Act, 1968 (hereinafter referred to as the Act) along with summoning order dated 24.4.2002 (Annexure P-5) along with all other subsequent proceedings arising therefrom, pending before the Court of Chief Judicial Magistrate, Karnal.

Before, I lay my hands over the legal proposition, a few facts, essential for disposal of the petition along with dates, which deserve notice,

are reproduced.

On 6.6.2001, Quality Control Inspector (Insecticide Inspector), Karnal drew a sample of `Butachlor 50% EC Weedicide' bearing batch No.04, manufacturing date May, 2001 and expiry date April, 2003 from the premises of Insecticides Dealer M/s Sharma and company, Nilokheri (Karnal). The name of the manufacturer was given as M/s Bharti Minerals Limited, Sikandrabad, District Buland Shahar. The sample was sent to the Public Analyst, who vide his report dated 6.7.2001 found the same to be misbranded. Letter dated 19.7.2001 (Annexure P-1) was sent by the Deputy Director of Agriculture-cum-Licensing Officer, Karnal to the petitioner informing about the fate of the sample. Pursuant to the aforesaid letter (Annexure P-1), the petitioner responded that he was not agreeing to the report and made a request to send the sample for re-analysis vide letter dated 30.7.2001 (Annexure P-2). However, the sample was not sent for re-analysis, but a complaint was lodged against the petitioner on 24.4.2002 (Annexure P-4), in which the petitioner was summoned for 4.5.2006. By that time, the shelf life of the medicine, of which the sample had been taken, had already expired.

The learned counsel for the petitioner has submitted that in view of Section 24(3) of the Act, even if all the allegations as set up by the respondent are accepted at its face value, even then the petitioner has a statutory right for sending the sample for re-analysis from the Central Laboratory, which right stands prejudiced in the present case, as such no offence under the Act is made out against him.

Admittedly, the request was made by the petitioner vide letter dated 30.7.2001 (Annexure P-2) for sending the sample for re-analysis, but the Deputy Director of Agriculture, who was the custodian of the sample, failed to comply with the provisions of Section 24(3) of the Act, which reads as under:-

> "**24. Report of Insecticide Analyst – (3)** Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report."

From the very perusal of the above quoted provision, it transpires that the petitioner has been given a right to get the sample re-analysed within twenty-eight days of the receipt of the copy of the report or from the date of the receipt of the notice from the Court regarding the proceedings pending against him. It may further be taken note of that the report declaring the sample as `misbranded' was sent on 19.7.2001 and the petitioner had made the request for re-analysis vide letter dated 30.7.2001 i.e. within a period of twenty-eight days, and for the second time, he was again deprived of his right as by the time the petitioner was apprised of the complaint and the report on receiving the court notice, the shelf life of the

insecticide in question had already expired in April, 2003. Therefore, the petitioner was deprived of his valuable right. As such, the continuance of such complaint and the proceedings arising therefrom, would be misuse of the process. I find support to my view from the judgment delivered by the Apex Court, delivered in case **M/s Gupta Chemicals Pvt. Ltd. and others vs. State of Rajasthan and another**, *2002(4) RCR(Crl.) 762*, wherein, it was held that Section 24(3) of the Act clearly provides that ordinarily in the absence of any material to the contrary, the report of the insecticides analyst will be accepted as final and conclusive of the material contained therewith. This is, however, subject to the right of the accused to have the sample examined by the Central Insecticides Laboratory, provided he communicates his intention for the purpose within 28 days of the receipt of the copy of the report. It was further held that this right vested under the statute is valuable for the defence. If the accused had intimated the Insecticide Inspector their intention to have the sample tested in the Central Insecticides Laboratory within the prescribed limit of 28 days of the receipt of the copy of the State Analyst's report, yet no step was taken by the Inspector either to send the sample to the Central Insecticides Laboratory or to file the complaint in the Court with promptitude so that the accused may move the Magistrate for appropriate order for the purpose. A serious prejudice is being caused to the accused and in such situation, no useful purpose will be served to continue with the criminal proceedings against the petitioner as the same will be futile exercise and abuse of the process of the Court.

The aforesaid judgment has been relied upon by this court in

number of cases including; **M/s United Pesticides vs. State of Haryana, (P&H)**, *2005(1) RCR(Crl.) 23* and **M/s Jai Shri Agro Industries Pvt. Ltd. and others vs. State of Punjab**, *2003(1) RCR(Crl.) 552.*

I also do not hasten to disagree with the argument of the Senior Deputy Advocate General appearing for the respondent – State of Punjab that since the petitioner already knew the date of expiry i.e. shelf life of the insecticide in question, therefore, he could make a request to the Court after the receipt of the report regarding the contents of the sample received by him, therefore, the benefit of provisions of Section 24(3) of the Act cannot be extended to him, because it is the statutory right of the accused, which has been bestowed upon him to protect him from superfluous litigation and to make sure that the report of the Public Analyst was final in the absence of the protest raised by him. In the instant case, the petitioner immediately made a request on receipt of the report to the Deputy Director of Agriculture for sending the sample for re-analysis, but the authorities concerned remained silent and, thereafter, the petitioner never knew about the lodging of the complaint till he was served in that case through bailable warrants on 4.5.2006.

For the foregoing reasons, the complaint dated 24.4.2002 cannot be sustained, as the report of the Insecticides Analyst cannot be termed as conclusive, so as to make the same as a basis for lodging the complaint against the petitioner. Since the sample was not got re-analysed despite the request of the petitioner, during the validity period, it has

certainly prejudiced the petitioner and his valuable right could be said to have been snatched.

Consequently, I hereby allow the petition and quash the complaint (Annexure P-4) as also the summoning order (Annexure P-5), both dated 24.4.2002 and all the subsequent proceedings arising therefrom.

Copy of the order be sent to the Trial Court.

(A.N.JINDAL)
JUDGE

The 29th day of November, 2007
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To be Referred to Reporter - **Yes/ No**